

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

GEORGE C. WELLS,

Petitioner,

vs.

LEROY KIRKEGARD, WARDEN
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

CV 15-107-GF-BMM

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

George C. Wells filed a Petition for Writ of Habeas Corpus on December 4, 2015. Wells had filed a state habeas petition in 2015 that asserted that his conviction as a persistent felony offender should be considered illegal. *Wells v. Kirkegard*, No. OP 15-0466 (Mont. filed Sept. 29, 2015). The Montana Supreme Court determined the persistent felony offender sentence illegal. The Montana Supreme Court remanded the matter to the Eighth Judicial District Court for resentencing.

Wells petition in this Court expressed confusion about why the district court had not yet resentenced him. (Doc. 1 at 2.) Judge Pinski has since resentenced Wells in Cause No. ADC-81-116. United State Magistrate Judge John Johnston

entered Findings and Recommendations in this matter on the April 27, 2016. (Doc. 11.) Judge Johnston has recommended that Well's petition be denied as moot. (Doc. 11 at 4.) Judge Johnston also has recommended that the Clerk of Court be directed to enter by separate document a judgment of dismissal. *Id.* Judge Johnston has recommended further that the Court should deny a certificate of appealability. *Id.*

Wells filed no objections to Judge Johnston's Findings and Recommendations. When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). The Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Under Article III of the United States Constitution, federal jurisdiction should be limited to actual ongoing cases or controversies. U.S. Const. Art. III, § 2, cl. 1; *see also Spencer v. Kemna*, 523 U.S. 1, 7 (1998). The trial court's resentencing of Wells pursuant to the Montana Supreme Court's remand order eliminates the "case" or "controversy" raised in Well's petition. Well's habeas petition should be denied as moot.

The Court finds no clear error in Judge Johnston's Findings and Recommendations and adopts them in full.

Accordingly, **IT IS ORDERED** that:

1. The Petition (Doc. 1) is **DENIED** as moot.
2. The Clerk of Court shall enter by separate document a judgment of dismissal.
3. A certificate of appealability should be **DENIED**.

DATED this 25th day of May, 2016



Brian Morris
United States District Court Judge